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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Calling Party Pays Service Offering
in the Commercial Mobile Radio Services

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WT Docket No. 97-207

COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

The Personal Communications Industry Association (“PCIA”) praises the FCC’s initiative to examine the issues associated with the introduction of a CPP service option in the United States. The viability and continued success of CPP in the U.S., however, will not be easy to achieve and is wholly contingent on the implementation mechanism adopted. While many carriers, including the ILECs, may wish to assume that CPP can have a significant role in the marketplace without regulatory intervention, such an assumption ignores the technical and practical complexities associated with CPP implementation in today’s telecommunications marketplace. PCIA believes it also is appropriate for the Commission to reexamine, albeit perhaps not in this proceeding, its policies associated with CMRS-LEC interconnection.

The *Notice’s* proposal for implementation of CPP in the United States differs considerably from the international CPP model. While the differences between the U.S. and foreign regulatory and competitive environments must be recognized, the international experience nevertheless demonstrates that when CPP is a preferred or non-optional service offering that is billed by the fixed carrier, it has been successfully implemented in a variety of cultures and regulatory environments. The international model demonstrates that CPP has the potential to offer consumers lower prices and more choice in the telecommunications marketplace. Indeed, CPP has been implemented successfully throughout Europe, Latin America and elsewhere around the world. Although the details of implementation are not the same in every country, the evidence presented in these comments demonstrates that CPP can stimulate demand, give consumers more flexibility in using their wireless phones for incoming calls and increase competition between CMRS and landline services.

The *Notice's* CPP proposal is considerably different from the international model. Given the success of the international model for CPP, PCIA urges the Commission to consider the significance of implementing a service that is unlike CPP models available worldwide. Indeed, deviations from the international CPP model will increase the complexity of CPP implementation in the United States. To implement CPP as a workable service option, the FCC must recognize the link between its regulatory choices and the results in the marketplace.

Specifically, the FCC should adopt a national system to inform callers that charges may be incurred to complete the call to a CMRS customer that has chosen the CPP service option. A nationwide notification mechanism is necessary for the nationwide implementation of CPP and to avoid conflicting state-by-state requirements. PCIA's members also agree that CPP notification must be uncomplicated and transparent, *i.e.*, consumer-friendly. Such a notification mechanism does not legally or practically require notification of the exact charges associated with a CPP call.

In addition to establishing a workable notification mechanism, the FCC also must recognize the need for cost-based access to ILEC billing and collection and adopt ILEC billing and collection as a mandatory requirement. As international CPP case studies demonstrate, CPP cannot become a viable service option for CMRS carriers without reasonably-priced ILEC billing and collection functions. Without a cost-effective means of receiving compensation for completed CPP calls, CMRS providers will not be able to offer CPP at a price acceptable to consumers.

Many statutory provisions and prior Commission decisions provide a basis to require ILECs to provide billing services to CPP service providers. One option is to treat billing and collection services as an unbundled network element at TELRIC pricing. This determination

would enable CMRS providers to offer CPP at reasonable rates. Because, however, a large number of CPP calls will be interexchange calls, it may make more sense to require the IXC that carries the call to bill for the call. The Commission also should evaluate the extent to which the billing and collection services of other carriers, including IXCs, CLECs and other CMRS carriers should be made available.

PCIA believes reexamination of wireless and landline interconnection should not be the focus of a calling party pays proceeding. However, the Commission already has an open docket on these interconnection matters. It should use that proceeding to clarify its rules regarding the reciprocal compensation relationship between CMRS interconnectors and incumbent LECs and to examine the access or interconnection relationship between CMRS carriers and interexchange carriers. It should do so promptly regardless of what actions it takes on CPP.

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	2
II. PROPERLY IMPLEMENTED, CPP WOULD BENEFIT CONSUMERS	4
A. Leaving CPP Implementation Entirely to the Marketplace Is a Recipe for Confusion and Will Assure its Failure.....	4
B. If Implemented Properly, CPP Will Enhance the Competitiveness of Wireless Telephony Carriers and Benefit Telecommunications Subscribers	9
III. SUCCESSFUL INTERNATIONAL MODELS DEMONSTRATE THE VIABILITY OF CPP.....	12
A. International Experience with CPP.....	12
B. International CPP Models: Country Case Studies	15
C. Conclusions from International Case Studies	21
IV. ANY CALLER NOTIFICATION SHOULD BE SIMPLE, UNOBTRUSIVE AND IMPLEMENTED NATIONWIDE	23
A. A National Approach to Notification Is Essential	24
B. The FCC Has the Jurisdiction to Implement Uniform Notification Rules Under Sections 201(b) and 332(c)(3)(A) of the Act.....	25
C. Notification Messages Should Not Be the Equivalent of a CMRS Miranda Warning.....	27
V. FCC REGULATION OF CPP RATES IS UNNECESSARY TO PROTECT CONSUMERS	31
VI. THE COMMISSION MUST CREATE A FRAMEWORK REQUIRING ILEC BILLING AND COLLECTION FOR CPP CALLS.....	33
A. There Is No Substitute for Reasonably Priced, Widely Available ILEC Billing and Collection for CPP.....	33
1. Business Models for CPP Billing and Collection	35
2. The Cost and Logistics of CPP Direct Billing Are Prohibitive to Most CMRS Carriers.....	37
3. Billing Performed by the Originating Subscription Carrier More Closely Reflects the International CPP Model	39
B. The FCC Has the Jurisdiction to Require ILECs to Provide CPP Billing and Collection Functions.....	44
C. The States Should Not Be Permitted to Prohibit ILECs from Providing Billing and Collection Services to CMRS Providers.....	52

TABLE OF CONTENTS
(continued)

	Page
VII. CARRIER TO CARRIER RELATIONSHIPS: REVISED CMRS INTERCONNECTION MODELS.....	54
VIII. CONCLUSION	58

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COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA") hereby submits its comments on the notice of proposed rulemaking proposing to establish calling party pays ("CPP") in the United States.¹ PCIA is encouraged by the Commission's interest in CPP and in other initiatives that will allow commercial mobile radio service ("CMRS") providers to compete effectively with wireline technologies.² Given the importance of establishing new service arrangements that facilitate the development of CMRS and provide the public with enhanced telecommunications services, the Federal Communications Commission ("FCC" or "Commission") should take all steps necessary to make CPP a viable service option available under federal rules throughout the United States.

¹ Calling Party Pays Service Option in the Commercial Mobile Radio Services, *Notice of Proposed Rulemaking*, WT Docket No. 97-207, FCC 99-137 (rel. July 7, 1999) ("Notice").

² Among others, PCIA's member companies include PCS licensees and participants in the cellular, paging, ESMR, SMR, mobile data and cable industries. PCIA's seven member sections include: (1) the Personal Communications Services Alliance; (2) the Mobile Wireless Communications Alliance; (3) the Paging and Messaging Alliance; (4) the Private Systems Users Alliance; (5) the Site Owners and Managers Alliance; (6) the Wireless Broadband Alliance; and (7) the Associate Members.

I. INTRODUCTION

PCIA applauds the FCC's efforts to explore issues associated with the introduction of a CPP service option in the United States. The FCC is correct that CPP requires a consistent, federal platform for implementation to be a viable service offering. PCIA believes that, if properly implemented, CPP has the ability to enhance competition between landline and wireless telephony carriers in the local markets, increase demand for mobile phone service generally, give wireless customers incentives to make and receive calls, increase consumer choices with respect to telecommunications services and reduce the cost of mobile service to customers.

It would appear that CPP brings far fewer opportunities to narrowband carriers, in particular those offering one-way services. Those carriers have aggressively created and are offering to their subscribers pricing packages, including flat rate packages, that have made the prices for services highly competitive and, from a consumer's perspective, highly predictable. These predictable and competitive pricing options that paging carriers have been able to offer and which consumers have embraced, have created an environment for paging carriers and customers in which there is less need in that market segment for CPP. Nonetheless, both broadband and narrowband carriers individually see CPP as an optional service that needs to be made available for carriers to choose whether or not to implement.

CPP's promise, however, is wholly dependent upon the way it is implemented. From the point of view of a caller or a CMRS subscriber, the greater the complexity and potential for confusion, the less likely the service will be accepted widely in the marketplace. From the CMRS carrier's point of view, if the economic underpinnings of CPP and the relationships among carriers for providing and collecting revenue for the service are not addressed effectively at the outset by the FCC, then only those CMRS carriers affiliated with large telecommunications companies will even consider introducing CPP. Mid-sized or smaller

CMRS providers unaffiliated with incumbent local exchange carriers (“ILECs”) will be unable to introduce a viable CPP service option. This would be an unsatisfactory public policy result that the Commission should do everything in its power to prevent.

The *Notice*’s proposal for implementation of CPP in the United States differs considerably from the international CPP model. Other countries use special area codes and exchanges and fixed-line carrier billing and do not impose the intricate notification requirements proposed in the *Notice*. Such deviations from the international CPP model will increase the complexity of CPP implementation in the United States. PCIA thus urges the Commission to look very carefully at the significance and impact of implementing a service that looks very different from the successful CPP models available worldwide.

Indeed, the FCC has recognized there are a number of complex interrelated issues associated with CPP implementation, *e.g.*, consumer notification and education, the need for access to cost-based ILEC billing and collection functions and consideration of inter-carrier implementation issues. If the FCC envisions CPP as a workable service option, it must appreciate the link between its regulatory choices and the results in the marketplace. Similarly, the Commission should recognize that CPP must be supported by a viable economic model and available systems infrastructure if CPP is to emerge as a mass-market service in the United States.

Specifically, the FCC will not have advanced the goal of implementing a pro-competitive regulatory regime to facilitate the widespread availability of CPP if, at the end of this proceeding, it fails to articulate the need for cost-based access to ILEC billing and collection and adopt it as a basic requirement. Similarly, should the FCC mandate delivery of a cumbersome or complicated notification message each time a caller tries to reach a CPP subscriber, there will be

far less interest in implementing CPP within the CMRS community. Inter-carrier relationships also must be addressed, or at the very least, taken into account by the Commission in development of a viable CPP regime. As detailed in these comments and the attached White Paper by DETECON, Inc.,³ CPP implementation challenges abound. And while CPP is offered successfully in many countries worldwide, the attached country case studies prepared by the Strategis Group (“Strategis”) demonstrate substantial differences between the international CPP framework and the framework featured in the *Notice* that may affect CPP’s success in the U.S. market.⁴

II. PROPERLY IMPLEMENTED, CPP WOULD BENEFIT CONSUMERS

A. Leaving CPP Implementation Entirely to the Marketplace Is a Recipe for Confusion and Will Assure its Failure

The Commission has proposed a national framework for implementing CPP and expressed the hope that CPP could spur competition and demand within the wireless market by offering consumers a different, less expensive service alternative.⁵ The *Notice* also expresses the belief that CPP could help wireless telephone services become a competitive alternative to landline local exchange service.⁶

³ See *Impact of Calling Party Pays CPP on Systems Infrastructure, A White Paper Developed for PCIA*, by DETECON, Inc. (Sept. 1999) at Exhibit 1 (“DETECON White Paper”).

⁴ See Country Case Studies prepared by the Strategis Group at Exhibit 2 (including Argentine Case Study, Chilean Case Study, German Case Study, Mexican Case Study and United Kingdom Case Study) (hereinafter referred to by specific country Case Study or generally as “Country Case Studies”). Both the DETECON White Paper and the Strategis material focus only on broadband CMRS.

⁵ *Notice* at ¶ 21.

⁶ *Id.*

While it may be tempting for the Commission to assume that CPP will succeed or fail based on its acceptance in the marketplace without regard to its regulatory underpinnings, such an assumption would be naïve. As the DETECON White Paper and the country-by-country case studies prepared by Strategis reveal, there are a variety of possible service arrangements and intercarrier and customer relationships that conceivably could be regarded as CPP.⁷ Based on the Strategis case studies, no country studied merely authorized CPP as a concept and left its implementation wholly to the marketplace. Rather, responsible government bodies set a responsible framework for CPP.⁸

If the Commission merely authorizes the concept but fails to ensure that the fundamental mechanics of CPP are workable, then CPP will not succeed in the United States. CPP cannot reasonably be implemented without a common understanding or direction as to carriers' respective obligations and responsibilities. Failure to enunciate such responsibilities here will doom the widespread deployment of CPP because carriers will not have the basic information needed to create and evaluate a CPP business plan. The FCC also must deal effectively with the question of access to the components necessary for CPP to work. In the experience of PCIA's members, this will mean the Commission must require ILECs, as well as other carriers, to cooperate in CPP billing and collection.

PCIA's call for conscious structure in developing a coherent framework for CPP in the United States is not in any way a repudiation of PCIA's strongly held view in favor of

⁷ See DETECON White Paper at 2.0 – 3.1.2.2; Country Case Studies, Executive Summary at 1.2, 1.2.1, 1.3, 1.3.1, 1.5 (discussing the different characteristics, billing arrangements, roaming procedures and notification mechanisms adopted by each country studied).

⁸ See *generally* Country Case Studies.

marketplace competition over unnecessary regulation. Indeed, the Commission's reliance on competition in the CMRS marketplace has allowed the emergence of robust competition among broadband CMRS providers. Even a cursory review of the various alternatives available to CMRS carriers considering CPP, however, illustrates that reliance on pure market forces will prove inadequate to advance competition between CMRS providers and incumbent local exchange carriers if the chosen vehicle is CPP. Simply put, carriers who are indispensable to offering CPP may have incentives not to cooperate in its deployment.

With the emergence of new CMRS providers in local markets, increased competition in the CMRS marketplace, and the development of fixed wireless services, the potential wireless threat to ILEC local market dominance has increased. As the Commission has recognized, the "competitive pressure brought to bear on the local exchange market by broadband CMRS providers could increase the incentive for incumbent LECs to engage in anticompetitive practices, such as discriminatory interconnection, cost-shifting, and anticompetitive pricing practices."⁹ Thus, if the Commission views CPP as an enabler of competition, then action to overcome ILEC incentives is crucial to ensuring that all CMRS carriers can offer CPP as a viable service option for consumers. If the FCC does so, it will hasten the day when sustainable, facilities-based competition emerges in the local exchange market.

CPP also must be an option that is workable for all CMRS providers, large and small. One class of CMRS providers, *i.e.*, those with substantial financial resources or access to affiliated ILEC delivery of a bill to end users and collection services, must not be given a

⁹ Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services; Implementation of Section 601(d) of the Telecommunications Act of 1996, *Report and Order*, 12 FCC Rcd 15668, 15668 (1997), *aff'd on recon*, *First Order on Reconsideration and First Memorandum Opinion* *continued...*

competitive advantage over other CMRS carriers lacking these resources. As the Chairman has asserted “[a]s long as I am FCC Chairman, I will do everything in my power to ensure that no company will shut out a competitor, wireless or otherwise. True competition requires that everyone play by the rules. And we will make sure that happens.”¹⁰ Accordingly, the Commission’s CPP implementing structure must have rules that encourage competition in the local exchange market and enable CPP to be a viable CMRS service offering for all CMRS carriers.

Despite the well-known popularity of mobile services, the penetration of a range of mobile telephone services to large segments of the United States population and increased battery life, substantial imbalances persist between incoming and outgoing traffic of broadband CMRS networks as compared to wireline service.¹¹ This situation is not the result of free consumer choice but apparently due to a reluctance on the part of customers to use their mobile phones for incoming calls, or even give out their mobile phone numbers. In addition, calling parties do not routinely call mobile phones in the same manner they call landline phones. PCIA’s members believe that the call charging patterns for landline calls and broadband CMRS calls in part account for this circumstance. It is uncontrovertible that the perceived incidence of call payment obligations varies depending upon whether the caller is dialing a mobile or a fixed landline phone and this affects the behavior of the calling and called party. The international

...continued

and Order, WT Docket No. 96-162, FCC 98-43 (rel. June 30, 1999) (establishing safeguards to ensure fair rules of competition and to address the potential for anticompetitive behavior).

¹⁰ Speech of Chairman William E. Kennard, CTIA Convention New Orleans, LA February 9, 1999, “Crossing Into The Wireless Century.”

¹¹ In the United States, inbound traffic accounts for only 20 percent of total wireless traffic. See MOBILE PHONE NEWS, “Caller Pays Proposal Prompts Concerns” (June 14, 1999).

CPP experience demonstrates, however, that a shift in the responsibility for call payment should allow wireless customers to use their phones more effectively to meet their communications needs.

While introducing CPP may result in the need for a change in settled expectations of who pays what for certain calls and who bills and collects for calls, the Commission should not be dissuaded from taking steps to make wireless services more accessible in this manner. The FCC has handled major paradigm shifts in customer expectations in the past that directly affected the assumptions and expectations of local telephone subscribers. Experience shows that consumers can and do adjust to these changes. For example, during Bell System divestiture, the FCC required interexchange carrier equal access and presubscription, requiring customers to affirmatively choose their preferred interexchange carrier for interLATA calls.¹² There, the Commission expressed concern that, without affirmative regulatory requirements, AT&T would enjoy a definite competitive advantage as the “default” carrier for customers failing to designate a preferred interLATA carrier. To avoid this result, the Commission imposed its presubscription and balloting requirements, which required consumers entirely unfamiliar with competitive options in the interexchange market to designate their preferred IXC by ballot as BOC end offices were converted to equal access.

The Commission expressed the view that presubscription balloting, customer information campaigns and mandatory new subscriber presubscription “would mitigate and eventually eliminate AT&T’s advantage without the inconvenience or expense of blocking or distributing calls by formula.” An unbridled “marketplace” solution to landline equal access

¹² See *Investigation of Access and Divestiture Related Tariffs*, 101 F.C.C. 2d 911 (1985), *recon. denied*, 102 FCC 2d 503 (1985).

never would have achieved long distance competition as it would have entrenched the then-dominant IXC as the “default” carrier for unsubscribed interLATA traffic. Similarly, a marketplace solution for CPP that leaves the thorny details entirely unresolved cannot adequately address carriers’ competitive incentives and will fail to bring about more direct CMRS-landline competition, thereby eliminating one of the most important public benefits of CPP.

B. If Implemented Properly, CPP Will Enhance the Competitiveness of Wireless Telephony Carriers and Benefit Telecommunications Subscribers

CPP has the potential to offer consumers lower prices and more choice in the telecommunications marketplace. Specifically, by relieving broadband CMRS customers of the cost of incoming calls, CPP can reduce the cost of their mobile telecommunications service and/or permit consumers to increase their outbound mobile usage for the same total cost. CPP could provide several other tangible benefits to broadband CMRS subscribers, including: (1) greater willingness to leave phones turned on; (2) more willingness to receive incoming calls; (3) more willingness to give out telephone numbers; and (4) an overall increase in number of wireless calls made and received. CPP could provide consumers more flexibility, predictability and control over what they spend for both incoming and outgoing calls. In short, CPP may increase the amount of traffic in both the wireless and wireline networks and encourage new wireless service subscribers. Chairman Kennard also has recognized the potential consumer benefits of CPP:

There are two main reasons for implementing CPP. First, it has the potential to make wireless services available to a whole new category of consumers: families on tight budgets who cannot afford mobile phones today, people who would otherwise turn off their phones to avoid having to pay for incoming calls, and students in college. Second, it will help hasten the day when our wireless phone might very well be our only phone, when

wireless is a real substitute for wireline. With proper notification, CPP can potentially provide tremendous benefits to American consumers.¹³

Certain CMRS carriers have begun either experimenting or providing CPP service options to their customers.¹⁴ While not yet a robust service offering in the United States, CPP has been shown to promote greater usage of wireless handsets.¹⁵ Moreover, because, at a carrier's option, wireless CPP customers are not charged for most incoming calls, they have been shown to be more willing to give out their mobile phone number.¹⁶ According to one provider, CPP "has always been very well received" by wireless customers.¹⁷

In addition to providing consumers with more control and increasing the number of mobile telephone subscribers, CPP also promotes ubiquity in communications by offering consumers the ability to reach people who are not landline telephone subscribers, and affording all consumers more opportunity to communicate with others. CPP also has the potential to benefit lower-usage consumers who do not require large buckets of minutes, as well as those interested in low cost or prepaid service options. CPP can dramatically lower the cost of these typically expensive prepaid minutes. As a recent Merrill Lynch analyst report indicated, prepaid

¹³ Press Statement Of Chairman William E. Kennard on "Wireless Day," News Release, June 10, 1999.

¹⁴ See, e.g., MOBILE COMMUNICATIONS REPORT, "Local Calling-Party-Pays System Limited, Needs National Standards," (June 14, 1999).

¹⁵ *Id.*

¹⁶ *Id.* ("CPP customers consistently have higher levels of phone use than traditional clients, showing that CPP 'promotes more usage' of wireless phones").

¹⁷ See *id.* (Remarks of CellularOne President Greg Kilmek).

has not been a “huge factor” in the United States to date, partly because the United States does not have calling party pays.¹⁸

In addition to the consumer benefit, CPP has the potential to revolutionize the competitive development of the wireless telephone industry. Because CPP has the potential to increase calls to subscribers and overall usage, CPP also has the potential to encourage additional CMRS penetration and presence in the local telecommunications marketplace. As Chairman Kennard has noted “[I] believe that it’s time for us to find a way to implement a calling party pays system in this country. Only five percent of phone calls are now made on mobile phones. I think that number would increase dramatically with a calling party pays system.”¹⁹

CPP has another advantage. It will align customer call payment expectations to mirror those of landline calling.²⁰ This likely would stimulate additional competition with local exchange carriers in residential markets and make mobile phone service more attractive to new market segments. All in all, there are a number of reasons why CPP, as a service option, will enhance consumer choice and lead to increased competition. The Commission’s challenge is sorting through the various models for CPP implementation available from PCIA’s study of how CPP is offered in other countries, making the right choices for the U.S. market and establishing a workable CPP regime.

¹⁸ The report goes on to say that “We still think that it could become a bigger contributor going forward.” COMMUNICATIONS DAILY, “Prepaid Wireless Plans Leave Scant Paper Trail” (July 29, 1999).

¹⁹ Remarks by William E. Kennard, Chairman Federal Communications Commission to Wireless ‘98, February 23, 1998.

²⁰ See ATLANTA JOURNAL AND CONSTITUTION, “Federal Regulators Would Send Cell Phone Bills to Callers” (June 8, 1999) (“Analysts say the United States must have a calling-party-pays policy before consumers will view wireless service, a \$40 billion market, as a true alternative to traditional wired phone service in the \$190 billion U.S. phone market.”).

III. SUCCESSFUL INTERNATIONAL MODELS DEMONSTRATE THE VIABILITY OF CPP

CPP has been implemented successfully throughout Europe, Latin America and elsewhere around the world. Although the details of implementation and impact of CPP vary from country to country, the empirical data presented in the attached report by Strategis on five countries demonstrates that CPP can stimulate demand, result in more balanced traffic flows and make mobile phone service more competitive with landline services. Of course, in examining international CPP models, the Commission must be mindful of structural, regulatory and other differences between the U.S. and foreign telecommunications markets that may impact the success of a CPP service option in the United States. However, the international experience with CPP provides an indication of the benefits that may accrue from the introduction of an appropriate CPP service option in the United States.

A. International Experience with CPP

The international experience with CPP demonstrates that such a service offering enhances the ability of wireless subscribers to use wireless telephony much as they would wireline services, resulting in increased demand for CMRS services and enhanced competition in telecommunications services. In Latin America, for example, where CPP was introduced *after* mobile services were already well established and was implemented as an optional service, CPP has been a primary driver in the growth of wireless services.²¹ In countries where CPP was implemented relatively early and before the advent of prepaid service options (such as Brazil,

²¹ See EIU Pyramid Newsletters-Latin America, "Calling Party Pays" (April 20, 1998); see also MOBILE PHONE NEWS, "Prepaid Prominent Among Providers' Tools for Survival in Latin American Markets (June 29, 1999) ("The prevalence of calling party pays in most of the [Latin American] markets, including Mexico, as of May, buttresses the attraction of prepaid as well as wireless services generally.").

Columbia and Venezuela), CPP has supported steadily rising growth in subscribers. In other countries, implementation of CPP has sparked tremendous growth in a short period of time.²²

Argentina's recent experience, in particular, exemplifies the potential for wireless subscriber growth resulting from CPP.²³ Argentina's implementation of CPP on April 15, 1997 preceded the adoption of prepaid service options by more than six months, making it possible to isolate the effect of CPP on subscriber growth. Argentina started in 1997 with 667,000 wireless subscribers (a 1.9% penetration rate), a number which tripled to 2 million subscribers (a 5.7% penetration rate) by year's end.²⁴ Because a substantial majority of this subscriber growth occurred between April 1997 and October 1997 (before the introduction of most prepaid options), CPP is considered the single most important factor in Argentina's wireless subscriber growth in 1997.²⁵

In addition to increasing subscriber growth, the implementation of CPP can increase inbound and outbound wireless telecommunications calls. Numerous studies have demonstrated that CPP reduces the cost of mobile ownership.²⁶ Savings resulting from CPP permit wireless

²² See *id.*; see also EIU Pyramid Newsletters-Telecommunications Development Report, "Nortel to Build BellSouth's Nationwide Network in Chile" (June 25, 1999) ("Chilean market heats up with the recent introduction of calling party pays.").

²³ See EIU Pyramid Newsletters-Telecommunications Development Report, "Heightened Competition Ushers in a Record-Setting Year in South America" (May 29, 1998) ("*Heightened Competition*").

²⁴ *Id.*

²⁵ *Id.*

²⁶ See CPP Impact on Tariffing and Interconnect (March 1998) (available at <http://www.prodata-partners.com/articles/docs/cpp3.doc>) ("*CPP Impact on Tariffing and Interconnection*") at 4-6; CPP Effect on Wireless Market Growth, Regulatory and Pricing Issues (December 1998) (available at <http://www.prodata-partners.com/articles/docs/cpp.ppt>) ("*CPP Effect on Wireless Market Growth*") at 20-21; Calling Party Pays Mobile Tariffing: An International View at 4-5 (April 1997) (available at <http://www.prodata-partners.com/articles/doc/cpp4.doc>) ("*CPP: An International View*").

subscribers to increase the volume of their outbound calls for roughly the same charge as in a called-party pays environment. In addition, because subscribers generally do not pay for incoming calls under a CPP service option, they are more likely to leave their mobile phones on and accept incoming calls, thereby enabling them to better utilize their mobile service.²⁷

The European model, which features a CPP regime that is not optional, also shows that CPP results in calling patterns to and from wireless customers similar to those of wireline customers. In the United States, inbound traffic typically accounts for only 20% of total wireless traffic.²⁸ In countries with CPP, however, inbound and outbound wireless telecommunications traffic is relatively equal.²⁹ In this connection, 1994 market trials of CPP in the United States demonstrated that inbound wireless traffic would increase with a CPP service option.³⁰ Thus, CPP can lead to a more equitable balance of calls to and from wireless telephone customers.

In the countries studied, the fixed line carrier is responsible for billing for CPP calls. Billing costs, however, represent a minimal incremental cost for the fixed line operator. Although cellular providers receive less revenue per minute for CPP calls than for outgoing calls, the increased usage tends to offset the lower per minute revenue and leads to higher revenue per user.³¹ In every country examined, special exchanges or area codes are assigned to mobile telephones that are subscribed to the CPP service to inform callers that a CPP charge will apply.

²⁷ *See id.*

²⁸ *See* MOBILE PHONE NEWS, "Caller Pays Proposal Prompts Concerns" (June 14, 1999) ("the results of Yankee Group's 1999 mobile user survey of more than 3,400 wireless users revealed incoming calls represent only 20 percent of all wireless calls.").

²⁹ *See id.*; *see also* *CPP Effect on Wireless Market Growth* at 20 (inbound wireless minutes in Europe total 45-50%, with established CPP markets near 50%).

³⁰ These market trials showed that inbound minutes of use under a CPP service option increased from 26% to 32% over a six-month period. *See CPP: An International View* at 4.

³¹ Country Case Studies, Executive Summary at 1.1.

Some countries also employed a transitional notification message that was eliminated after a short time.³²

B. International CPP Models: Country Case Studies

The benefits of CPP are illustrated by the five attached country case studies prepared by Strategis on behalf of PCIA.³³ These case studies examine the telecommunications markets of Argentina, Chile, Germany, Mexico and the United Kingdom, with particular focus on the impact of CPP in those markets, both on consumers and on the inter-carrier relationships that are the bedrock of making CPP viable.

Argentina. Argentina implemented CPP in April 1997 pursuant to a governmental decree. CPP applies to all local fixed-to-mobile calls within a mobile phone subscriber's home region, except calls from payphones.³⁴ The mobile party pays wireless charges for incoming long-distance calls, mobile-to-mobile calls, calls from payphones and roaming calls.³⁵ Although CPP is "optional" in Argentina, when CPP was implemented the entire CMRS subscriber base was switched from called party pays to the CPP service option and only those subscribers who opt out are in a "called-party pays" mode.³⁶

CPP has been implemented in Argentina through interconnection arrangements between the fixed and wireless carriers. Fixed line carriers are responsible for billing their fixed user customers each time a fixed user customer makes a CPP call. Of the US\$0.35/min charged for

³² *Id.*

³³ *See generally* Country Case Studies.

³⁴ *See* Argentine Case Study at 2.2.

³⁵ CPP for mobile-to-mobile calls was scheduled to be implemented in July 1998, but has been delayed because the mobile carriers have not yet reached agreement on the applicable CPP rate. An agreement is expected by November 1999.

³⁶ *See* Argentine Case Study at 2.2.

CPP calls in Argentina, US\$0.33 goes to the mobile carrier and US\$0.02 is retained by the fixed carrier to compensate for its CPP billing and collection functions.³⁷

The area code (15) is assigned to all mobile phones in Argentina and only a miniscule minority of mobile subscribers has opted out of the CPP service option.³⁸ When CPP was first introduced in Argentina, a verbal message indicated that the call would be charged a higher tariff than a landline local call. However, the message was eliminated after a few months as Argentines became accustomed to CPP. CPP calls now are completed with no interruption or other indication to the user that the call will be charged at a higher per-minute rate than local landline calls.³⁹

Argentina experienced very rapid mobile subscriber growth immediately after calling party pays was introduced, over 200% growth in 1997. Argentine government and industry representatives credit this subscriber growth to the introduction of CPP.⁴⁰

Chile. Chile implemented CPP in February 1999 only for local fixed-to-mobile calls.⁴¹ The wireless operators were required to implement CPP and on May 1, all CTC and BellSouth customers were switched to CPP, however, the mobile called party pays wireless charges for incoming long distance calls, mobile-to-mobile calls between different mobile carriers and

³⁷ *Id.* at 2.3.

³⁸ *Id.* at 26.

³⁹ *Id.*

⁴⁰ *Id.* at 2.7.

⁴¹ Chilean Case Study at 3.2.

roaming calls.⁴² Although customers can opt out of CPP, the vast majority of Chilean wireless subscribers have chosen the CPP service option over mobile party pays.

Interconnection arrangements between the local fixed and mobile carriers govern CPP in Chile. Fixed line carriers are responsible for billing for CPP calls originating on their networks. CPP calls in Chile are charged at one of two per-minute rates: US\$0.21 (peak, 8:00 am. to 6:00 p.m., Monday-Friday) and US\$0.13 (off-peak, all other times). For CPP peak calls, the fixed operator receives US\$0.04 and the mobile operator receives US\$0.17 per-minute; for CPP off-peak calls, the fixed operator receives US\$0.01 and the mobile operator receives US\$0.12 per-minute.⁴³

The area code (09) is assigned to mobile telephones in Chile that use the CPP service option, indicating that the call will be charged a higher rate than a fixed network local call. No other form of notification is given to callers that CPP charges will be incurred if a CPP call is completed.⁴⁴

Chile's implementation of CPP, along with the earlier introduction of prepaid wireless service, has been credited for the 36% growth in wireless subscribers in the second quarter of 1999. This wireless subscriber growth has been accompanied by large increases in usage by both prepaid and contract wireless customers. Revenues per wireless customer also have increased because of a dramatic rise in the number of incoming minutes to contract and prepaid wireless

⁴² The service options available for the charging of mobile-to-mobile calls within the same mobile system varies by carrier.

⁴³ Chilean Case Study at 3.3.

⁴⁴ *Id.* at 3.6.

users, and a significant rise in outgoing usage by prepaid users who can “spend” their prepaid minutes on outbound calls.⁴⁵

Germany. CPP was implemented throughout Europe, including Germany, when the first analog cellular systems were introduced in the early 1980s.⁴⁶ Unlike many Latin American countries, there has never been a “non-CPP” service option available. CPP applies to all calls to mobile users, with the exception of international roaming calls.⁴⁷

CPP is managed through interconnection agreements between fixed line and wireless carriers in Germany, and retail CPP prices are determined by individual system operators. The operator on whose network the CPP call originates bills the calling party, and the mobile operator that terminates the call receives payment based on the interconnection charges agreed to by the carriers.⁴⁸

There is no formal consumer notification that a charge will be imposed for a CPP call in Germany. However, because mobile phones use different numbering than landline phones and CPP has been the norm since the inception of wireless service in Germany, there is general awareness that a call to a wireless phone costs more than a call to a landline phone.⁴⁹

Because CPP was introduced at the outset of mobile service, it is somewhat difficult to measure CPP’s impact on the growth of the German wireless market. CPP has been credited, however, for creating relatively balanced wireless traffic patterns in Germany. For example, in

⁴⁵ *Id.* at 3.7.

⁴⁶ German Case Study at 4.2.

⁴⁷ *Id.* at 4.2, 4.4.

⁴⁸ *Id.* at 4.3.

⁴⁹ *Id.* at 4.6.

the first quarter of 1999, calls from mobile to fixed users constituted 40% of German wireless traffic and fixed-to-mobile call accounted of for 36% of wireless traffic, a nearly balanced incoming/outgoing call distribution. The remainder of German wireless usage is made up of mobile-to-mobile calls.⁵⁰

Mexico. CPP was introduced in Mexico in May 1999. CPP applies to all local fixed-to-mobile and mobile-to-mobile calls. The mobile called party pays for wireless usage associated with incoming long distance calls and calls received while roaming outside of the subscriber's home network. Approximately 90% of Mexico's wireless subscribers have chosen CPP as their preferred service option.⁵¹

Interconnection arrangements govern the provision of CPP in Mexico. Telmex, the Mexican fixed line operator, is responsible for billing fixed line users for CPP calls. The CPP rate in Mexico is currently US\$0.27/min, of which Telmex receives US\$0.06 and the wireless operator receives US\$0.21.⁵²

The area code (044) is assigned to mobile phones that are subscribed to the CPP service option. If a call is made to a CPP wireless number without this area code, a message directs the caller to redial using the (044) area code. Although there is no other formal notification that a call will be subject to the CPP tariff, the Mexican government sponsored an ad campaign to raise awareness prior to the implementation of CPP.⁵³ Despite these efforts, there were some initial complaints from fixed customers about the new charges, and from wireless customers who

⁵⁰ *Id.* at 4.8.

⁵¹ Mexican Case Study at 5.2.

⁵² *Id.* at 5.3.

⁵³ *Id.* at 5.6.

sought to switch to calling plans that included fewer bundled minutes (because incoming CPP calls would not be charged against their pre-paid minutes).⁵⁴

According to the Mexican government, the average usage by wireless subscribers jumped 10% when CPP was introduced in May 1999. At the same time, the percentage of incoming calls increased to 40% (up from 37% in April), and mobile-to-fixed calls increased to 50% of total wireless traffic from 30% prior to the implementation of CPP. CPP is expected to increase average revenues per wireless customer in Mexico due primarily to increased incoming minutes of use.⁵⁵

United Kingdom. CPP was introduced in the United Kingdom when wireless service was launched initially in the early 1980s.⁵⁶ CPP applies to all calls to wireless telephone users, with the exception of international roaming calls.⁵⁷ Interconnection arrangements between fixed and mobile operators govern CPP in the United Kingdom. Retail prices for CPP are determined by the operator (mobile or fixed) on whose network the call originates and that operator bills its subscriber for the CPP call.⁵⁸ The wireless telephone operator that terminates the call receives payment based on a settlement type model using an interconnection agreement between the carriers.

There is no formal notification to a calling party that a CPP charge will be imposed for a call to a mobile subscriber. A prefix of either 08 or 07 is used for mobile phones in the United

⁵⁴ *Id.* at 5.5.3.

⁵⁵ *Id.* at 5.7.

⁵⁶ United Kingdom Case Study at 6.2.

⁵⁷ *Id.* at 6.2, 6.4. Because the carriers in the United Kingdom, *i.e.*, Vodafone and Cellnet, have attained extensive geographical coverage, national roaming is not an issue. *Id.* at 6.10.

⁵⁸ *Id.* at 6.3.

Kingdom.⁵⁹ As CPP has always been the regime for calls to wireless subscribers, there is general awareness that by dialing these numbers a caller will incur CPP charges.

C. Conclusions from International Case Studies

PCIA recognizes that there are differences between the U.S. and foreign regulatory and competitive environments that must be taken into account in evaluating the impact of CPP on the U.S. CMRS market. The international experience nevertheless demonstrates that when CPP is a preferred or non-optional service offering that is billed by the fixed service provider, it has been successfully implemented in a variety of cultures and regulatory environments without substantial customer confusion or backlash.

There are several other significant lessons for CPP implementation to be taken from the experience elsewhere that touch on the proposals contained in the *Notice*. First, in each of the countries studied — and PCIA believes these countries are representative of CPP implementation worldwide — local landline service is charged on a measured, usually per-minute basis. As a result, calling parties are accustomed to being charged for all their calls on a per-minute basis and the main differentiation between a landline or a mobile local call will be the per-minute rate that is charged.

Second, even in countries where CPP is treated as an “optional” service and was implemented long after wireless telephone services were initially introduced, government regulators have positioned CPP as the main or preferred format for calling to a local mobile subscriber. Only in those instances where a wireless telephone customer wanted to maintain a

⁵⁹ *Id.* at 6.6.

called-party pays service did the customer go to the effort of “opting out” of CPP.⁶⁰ Also, no country appears to have a regime that requires the use of intelligent network functions to permit mobile users to designate on a per calling number or other dynamic basis whether calls are to be treated as CPP or non-CPP.

Worldwide, there is not absolute uniformity regarding what calls to wireless phones are treated as CPP and what calls are excluded. Although countries generally exclude international landline calls and international roaming calls from CPP, some countries exclude calls from mobile to mobile from CPP charges, while others do not. There is also some variation in whether non-roaming intra-country long distance is included in the calling party’s charges for completing a call to a CPP subscriber. In cases where there are exclusions of categories of calls from CPP, the mobile phone subscriber pays the incremental charges associated with these calls.

None of the countries surveyed maintains any per call notification requirements. The consumer alert or notification each country deems appropriate is typically nothing more than a requirement to dial a mobile area code to reach the mobile subscriber. While several countries emphasized consumer education and notification of the changeover to CPP as it was introduced, no country surveyed required permanent advertising or intercept messages.

Finally, none of the countries surveyed has a model for CPP that requires a CMRS carrier to bill the calling party directly for its services. Instead, CPP billing and collection arrangements are part of the overall interconnection agreements between the CMRS provider and the local carrier. The predominant international mode features a “split” of per-minute revenues between the local carrier and the wireless telephony provider which compensates the local

⁶⁰ While PCIA recognizes that this is not the preferred approach, CPP implementation in the United States will nonetheless be more complex based on this difference alone.

landline carrier for its costs of billing and collection for each CPP call. These arrangements generally are required by the regulator, although some countries do not regulate the amount charged for a CPP call or the actual agreed revenue split, while other countries engage in oversight of these charges.

All in all, the *Notice*'s proposal for CPP in the United States varies significantly from the international model. Given the success of the international model for CPP, PCIA urges the Commission and the industry to recognize this fact and to consider carefully the significance of implementing a service that looks very different from CPP available worldwide.

IV. ANY CALLER NOTIFICATION SHOULD BE SIMPLE, UNOBTRUSIVE AND IMPLEMENTED NATIONWIDE

PCIA agrees with the Commission that it should adopt a national system to notify callers that charges may be incurred to call CMRS customers that have elected a CPP service option.⁶¹ A national CPP approach to notification is necessary for the nationwide implementation of CPP and to avoid conflicting state-by-state requirements that have impeded the introduction of CPP.

PCIA's members agree that any CPP notification requirements adopted by the Commission must be unobtrusive and transparent. PCIA's members may have different views on precisely what constitutes sufficient notification, which will be addressed in individual comments. PCIA believes, however, the Commission must seriously consider whether implementation of the full-fledged, four point per-call verbal notification proposed in the *Notice* will help calling customers understand a new CPP charging regime, or whether such per call notification would risk confusing or annoying calling consumers.

⁶¹ See *Notice* at ¶ 33.

A. A National Approach to Notification Is Essential

In the *Notice*, the FCC recognized that a national notification system that would apply to all calls is essential to implementing CPP in the United States.⁶² PCIA agrees that there are tremendous advantages to a national approach to notification. First, it would substantially facilitate the process of educating consumers about CPP. CMRS carriers with national footprints who choose to implement CPP could engage in national advertising campaigns and market a national CPP product.⁶³ Second, such an approach would facilitate implementation of CPP by allowing CMRS carriers who offer the service to provide standard notification in all their U.S. service areas. Thus, a national approach to notification would support the large-scale implementation of CPP throughout the country and likely reduce the costs and complexity of providing whatever CPP notifications the Commission deems necessary.

In contrast, inconsistent state notification requirements would create substantial barriers for wireless providers to offer CPP on a nationwide scale.⁶⁴ Indeed, subjecting interested CMRS providers to a patchwork of 50 different state notification requirements would create a tremendous implementation obstacle.⁶⁵ If individual states are permitted to adopt different

⁶² *See id.*

⁶³ The availability of widespread or national CPP is also dependent upon ubiquitous and reasonable ILEC billing and collection arrangements, as discussed *infra*.

⁶⁴ This problem is especially acute for wireless providers that employ “follow-me” roaming. It is conceivable that the wireless providers offering such service could be subject to fifty different notification requirements or more. Further, state rules that required disclosure of rates for CPP would violate the Section 332 prohibition against state rate regulation of CMRS. *See Implementation of Sections 3(n) and 332 the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, 1480 (1994) (permitting states to require CMRS providers to file *only* terms and conditions tariffs, which do not include rate provisions).

⁶⁵ The Commission need look no further than the recent report it received on the implementation obstacles posed to wireless enhanced 911 services to appreciate the difficulties of leaving important implementation issues to state, or even local, resolution.

notification requirements, wireless providers will have a Hobson's choice of adopting the most inclusive notification requirement of all (assuming none of the states' requirement are directly inconsistent) or not offering CPP where notification requirements are unduly onerous. Indeed, many individual CMRS switches serve more than one state, making compliance with multiple state rules doubly complex.⁶⁶ Not only could CMRS providers be subject to multiple and conflicting notification regulations, but the technical complexity of implementing varying state requirements could make compliance virtually impossible. It also would hamper CMRS carrier efforts to design and present a single interface to consumers. There is no reason for the Commission to hesitate in adopting a national approach to notification requirements associated with CPP.

B. The FCC Has the Jurisdiction to Implement Uniform Notification Rules Under Sections 201(b) and 332(c)(3)(A) of the Act

In the *Notice*, the Commission properly found that CPP is a CMRS service pursuant to Section 332 of the Act.⁶⁷ Because CPP is a CMRS service, the FCC has broad jurisdiction to regulate the provision of CPP services pursuant to Sections 201(b) and 332(c)(3)(A) of the Act.

Section 201(b) provides that “[t]he Commission may prescribe such rule and regulations as may be necessary in the public interest to carry out the provisions of this Act.”⁶⁸ As the U.S. Supreme Court held in *AT&T Corp. v Iowa Utilities Bd.*, Section 201(b) constitutes an explicit grant of FCC jurisdiction to make rules governing matters to which the Communications Act

⁶⁶ In this connection, the FCC noted that complying with different notification regulations for every state would require CMRS providers to program each state's individual notification requirements into each one of their switches. *See Notice* at ¶ 31.

⁶⁷ *See Notice* at ¶¶ 15-19 (analyzing the definition of “commercial mobile service” contained in Section 332(d) of the Act).

⁶⁸ 47 U.S.C. §§ 201(b).

applies.⁶⁹ The Supreme Court further concluded that the use of the qualifier “interstate or foreign” in Section 201(a) to limit the class of common carriers with the duty of providing communications services does not limit the class of provisions that the Commission has authority to implement.⁷⁰ Thus, Section 201(b), in conjunction with Section 332(c)(3)(A), provides the Commission with jurisdiction over all CPP services, including those that might otherwise be regarded as intrastate calls.⁷¹

Pursuant to Section 332(c)(3)(A), the Commission has been given broad jurisdiction to regulate CMRS services generally, with states given only a limited role. Section 332(c)(3)(A) of the Act provides:

... no state or local governments shall have any authority to regulate the entry of or rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a state from regulating other terms and conditions of mobile service.⁷²

By enacting this provision and amending Section 2(b) to except Section 332 from the states’ substantive authority, Congress explicitly intended to create a uniform federal regulatory framework for CMRS services.

In this connection, CPP notification requirements are inextricably tied to the entry of CMRS providers into the market and rates charged for CMRS services. As described above, a

⁶⁹ *AT&T Corp. v. Iowa Utilities Bd.*, 119 S.Ct. 721, 730 (1999).

⁷⁰ *Id.*

⁷¹ Section 2(b) of the Act is in accord. Section 2(b) provides: “*Except as provided in Sections 223 through 227 . . . and Section 332 . . . , nothing in this chapter shall be construed to apply or give the Commission jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service . . .*” 47 U.S.C. § 152(b). Thus, the FCC has full jurisdiction over CPP services under Section 332 of the Act.

⁷² 47 U.S.C. § 332(c)(3)(A).

national approach to CPP notification is essential for the large-scale implementation of CPP service offerings. By the same token, numerous conflicting state notification requirements would constitute local barriers to CMRS entry that Congress expressly intended to eliminate. In addition, notification procedures facilitate the market regulation of CMRS rates. The proposal in the *Notice*, for example, would advise callers that a charge will be incurred for calls to wireless customers and give callers the option to complete the call and incur a charge or terminate the call without charge. Thus, CPP notification is inextricably linked to CMRS entry and rates, over which the FCC has explicit jurisdiction.

Moreover, CPP notification requirements do not constitute “other terms and conditions” that may be subject to state regulation under Section 332(c)(3)(A). Although matters such as billing practices may fall within the scope of “other terms and conditions,” CPP notification procedures relate directly to the entry and provision of CMRS services and will affect the rates charged for such services. As a result, CPP notification falls outside of states’ authority under Section 332(c)(3)(A), which prohibits any direct or indirect state CMRS rate or entry regulation, and squarely within the FCC’s broad authority to regulate CMRS services and not merely CMRS rates.

C. Notification Messages Should Not Be the Equivalent of a CMRS Miranda Warning

In addition to being nationally uniform, any notification mechanism adopted by the Commission must be simple and consumer-friendly. Cumbersome notification mechanisms that make callers wait through a long and complicated verbal message to call wireless customers, particularly if such messages are repeated each time a CPP call is made, will frustrate the intended competitive and public interest benefits of CPP. As demonstrated by the *Strategis* case

studies, other countries do not rely upon verbal notifications to communicate that the call is a CPP call.⁷³

PCIA is concerned that the complex notification requirements initially proposed by the Commission, however well intended, will have the effect of deterring CPP calling as well as have other unintended negative consequences on the implementation of CPP in the United States. In the *Notice*, the Commission initially proposed that CPP notification include the following elements:

- (1) Notice that the calling party is making a call to a wireless phone subscriber that has chosen the CPP option, and that the calling party therefore will be responsible for payment of airtime charges.
- (2) Identification of the CMRS provider.
- (3) Disclosure of the per-minute rate, and other charges, that the calling party will be charged by the CMRS provider.
- (4) Notice that the calling party will have the opportunity to terminate the call prior to incurring any charges.⁷⁴

Including all of this information, even assuming it would be feasible technically, would create an extremely long and complicated CPP notification message. For example, the rates charged by a CMRS operator for particular CPP calls may vary by time of day, geographic location and/or the rate plan chosen by the CPP customer. In addition, other charges may be applied by IXC's and local carriers in completing the call. Describing the rate structures of the various carriers for each CPP call would be extremely burdensome, confusing to the caller, and

⁷³ The predominant international CPP model relies upon customers dialing a mobile "area code" as their notice that a CPP charge will apply to the call. Number exhaust and optimization measures under consideration in CC Docket No. 99-200 may make that approach impractical in the United States and other countries within the North American Numbering Plan.

⁷⁴ *Notice* at ¶ 42.

would significantly impede acceptance of CPP. Indeed, such complex and burdensome notification is unnecessary given the public's experience with long distance billing and toll calls generally.⁷⁵

From a technical and economic standpoint, it may be virtually *impossible* for CMRS providers to inform callers of the exact charges for a CPP call. Because mobile phone providers often have different rate plans for different service offerings, it would be virtually impossible for a provider to estimate the cost of each and every call to each and every calling party unless all carriers were directed to cooperate in this endeavor. To further complicate matters, CMRS carriers cannot distinguish in real time the different rates associated with each call (any applicable IXC charges, CMRS rates, local charges), some of which are under the control of other carriers. The variety of wireless service offerings, including short messaging and paging services, make the Commission's job particularly challenging because data-related services are priced very differently than voice services. This means that different forms of notification may be appropriate depending on the service.

Real time notification of the exact charges associated with a CPP call is legally unnecessary and practically unworkable. Complex notification methods are costly to implement and administer and will only serve to raise CPP rates. To the extent that the inclusion of cost information in CPP notification is designed to address excessive CPP charges by CMRS providers, the Commission has recognized that "there is no evidence to suggest that CPP pricing will in fact be problematic if CPP is implemented on an extensive basis in the United States."⁷⁶

⁷⁵ For example, in the landline market, there is no requirement on intraLATA LECs to provide called parties with any notification of the applicable per-minute toll charges, even when only 7 digits are dialed.

⁷⁶ See Notice at ¶ 54.

As other commenters in earlier stages of this proceeding have noted, the FCC requires notification messages to provide specific pricing information only in those cases where service providers have a demonstrated history of significant and persistent abuse of consumers.⁷⁷ Moreover, it is likely that originating carrier billing charges for CPP will vary so dramatically that it will be impossible to include exact cost information in the notification message. There is no basis to impose such burdensome notification requirements on CMRS providers that choose to offer a CPP service option.⁷⁸

Significantly, CMRS carrier rates are not tariffed either at the federal or state level.⁷⁹ Tariffing would provide legal notice of the applicable rate for CMRS service and would assist CMRS carriers to establish some limits on their liability to calling parties. Several PCIA members suggest that the availability of informational tariff procedures would be an option they would seriously consider in this context. Thus, the Commission should implement a simple nationwide notification policy that ensures that callers are aware they will be charged for a completed CPP call. However, the Commission must recognize that it is infeasible for CMRS providers to inform callers in real time of the exact charge for a CPP call.

⁷⁷ Specifically, the FCC required disclosure messages to include charges in the operator service provider and 900 pay-per-call services contexts due to substantial complaints about rates for these services. *See, e.g.*, Comments of the Cellular Telecommunications Industry Association, WT Docket No. 97-207 (Dec. 19, 1997) at 10-11.

⁷⁸ PCIA suggests to the Commission that if the concern is that CMRS carriers will “gouge” consumers, perhaps the Commission should consider setting a price cap that, if exceeded, would trigger the obligation for a cumbersome multipart verbal message triggered each time a CPP call is made.

⁷⁹ *See infra* Part V.

V. FCC REGULATION OF CPP RATES IS UNNECESSARY TO PROTECT CONSUMERS

The FCC should not regulate the rates for CPP calls. As the Commission already has concluded, CPP calls are a CMRS service and thus CMRS carriers set the rate of each incoming call.⁸⁰ CMRS rate regulation has been deemed unnecessary to prevent harm to consumers or to promote competition in the CMRS market and there is no reason to single out the CPP service option and reach a different conclusion.

Both congressional and Commission policy reflect a strong preference for deregulation where there is established competition. In 1993, for example, Congress set a new regulatory framework for CMRS that included a prohibition on state government regulation of the entry of CMRS providers or the *rates* charged for CMRS service, unless a state successfully petitioned for authority to regulate CMRS rates.⁸¹ The Commission denied nine state commission petitions for authority to continue to regulate CMRS rates under Section 332(c)(3).⁸² The subsequent year, the Commission used its new statutory authority to forbear from requiring CMRS providers to comply with the tariff filing obligations of Section 203 and several other provisions of Title

⁸⁰ Notice at ¶ 15.

⁸¹ To succeed in regaining an ability to rate regulate CMRS, a state was required to show that market conditions failed to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory, or that such market conditions existed and a CMRS offering was a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within the state. See 47 U.S.C. §§ 332(c)(3)(A)(i)-(ii).

⁸² See, e.g., Petition of the Connecticut Department Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, *Report and Order*, 10 FCC Rcd. 7025 (1995), *aff'd sub nom. Connecticut Dept. of Public Utility Control v. FCC*, 78 F.3d 842 (2d Cir. 1996); Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services, *Report and Order*, 10 FCC Rcd. 7842 (1995); Petition of the State of Hawaii for Authority to Extend its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii, *Report and Order*, 10 FCC Rcd 7872 (1995).

II.⁸³ While CMRS provider offerings remain subject to general nondiscrimination requirements, their rates for service are not subject to any state regulation or direct regulation by the Commission.⁸⁴

The Commission's extremely successful policy in favor of CMRS rate deregulation, competition and service innovation has resulted in a continued downward trend in CMRS subscriber rates and a continued increase in customer satisfaction. Indeed, CMRS providers of various services nationwide have responded to consumer demand for flexible pricing, bundled services and broader geographic serving areas by introducing innovative pricing options and varying service plans tailored to the needs of all types of residential and business customers.⁸⁵ Subscriber penetration continues to increase.⁸⁶ These trends merely emphasize that rate

⁸³ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd. 1411, 1463-93 (1994).

⁸⁴ See, e.g., Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312 (1993); Amendment of Part 90 of The Commission's Rules To Provide For the Use of The 220-222 MHz Band By The Private Land Mobile Radio Service, *Third Report and Order and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 10943, 10968 (1997) (limiting restrictions and regulations on 220 MHz nationwide licenses and providing licensees flexibility associated with larger spectrum blocks to help promote technical innovation and competition in the CMRS marketplace); Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees and Implementation of Section 257 of the Communications Act: Elimination of Market Entry Barriers, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21831, 21833 (1996) (adopting limited rules for CMRS that "generally permit open entry, allow flexibility, encourage technical efficiency, promote innovation and facilitate seamless networks.").

⁸⁵ See <<http://csg.sprint.com/pcs/>>(explaining Sprint PCS' new PCS Free & Clear PlanSM); <www.omnipoint.com/> (describing Omnipoint's OmniRateSM Monthly Plans, No-Fee PrepaySM Plans). Many other CMRS carriers maintain web sites that offer information on available coverage and service plans.

⁸⁶ Indeed, by the end of 1998, the combined domestic subscribership had grown to over 126 million units — a 17 percent increase over domestic subscribership in 1997. See Implementation of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Fourth Report*, FCC 99-136, 1999 FCC LEXIS 2979 at *7 (rel. June 24, 1999).

deregulation of CMRS service offerings has been a spectacular success. The scope of offerings demonstrate that the CMRS marketplace is responding to the needs of its customers.

Indeed, this increase in competition and the burgeoning of CMRS pricing options has not gone unnoticed. The Commission has recognized that competition in the mobile telecommunications environment has increased significantly as a result of new rate plans and service launches by broadband PCS, digital SMR carriers and other CMRS carriers. Moreover, several pricing trend reports — including one by the Commission itself — indicate that broadband CMRS prices have been falling and that these reductions are the result of entry by new carriers and an increase in competition among CMRS providers.⁸⁷ In the absence of any evidence that consumers will be harmed by a failure to regulate CMRS rates for CPP, the Commission should refrain from implementing any rate restrictions on CPP service offerings.

VI. THE COMMISSION MUST CREATE A FRAMEWORK REQUIRING ILEC BILLING AND COLLECTION FOR CPP CALLS

A. There Is No Substitute for Reasonably Priced, Widely Available ILEC Billing and Collection for CPP

Even if the Commission resolves every other issue contained in the *Notice* blocking widespread CPP implementation, the international CPP case studies demonstrate that CPP will never become a viable service option for CMRS carriers to offer without access to reasonably-

⁸⁷ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Third Report*, 13 FCC Rcd 19746, 19751-53 (1998) (noting that [While] [i]t is difficult to measure the overall change in mobile telephone prices brought about by th[e] entry [of new CMRS providers]. . . there are a number of reports on pricing trends available. Taken together, these reports suggest that prices have been falling and that the reductions are at least partly the result of entry by new competitors.”). PCIA also recognizes the importance of the issues surrounding the CPP rates charged for voice and TTY calls placed through TRS centers and will work to ensure that persons with disabilities are charged comparable rates for CPP calls. See also “The Impact of PCS Service on U.S. Wireless Pricing,” Study Prepared by the Yankee *continued...*